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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 697 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RATILAL BHURABHAI RATHOD

Appearance:

MS KATHABEN GAJJAR ASST. PUBLIC PROSECUTOR for Petitioner

MR DK MODI for Respondent No. 1 to 9

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 11/02/2000

C.A.V.JUDGEMENT

#. This is an appeal under Section 378(1) of the Criminal Procedure Code, 1973 (for short `Cr.P.C.) filed by the State Government challenging the original order of acquittal passed by the learned Judicial Magistrate First

Class, Savarkundla by his judgment dated 7-6-1991 in Criminal Case No. 144 of 1988 which was pending on his file.

#. In this appeal, the respondents were the accused before the trial Court. For the sake of convenience the parties will hereinafter be referred to as per parties before the trial court.

#. The case of the prosecution in a nut shell is as follows:

Accused no.3 is a partnership firm and accused nos.1 and 2 are the partners in that partnership firm. As per the evidence led in the case, accused no. 7 is a partnership firm and accused nos. 4, 5 and 6 are the partners in the said partnership firm, i.e. accused no. 3. As per evidence led in the case, accused no. 9 is a partnership firm and accused no. 8 is a nominee appointed under section 17(2) of the Prevention of Food Adulteration Act, 1954 (for short `the Act'). As per the evidence led in the case, from the very beginning, the accused no. 1 on behalf of accused no.3 advanced his case to the Food Inspector that the goods, i.e. coriander powder, was purchased from accused no. 9 and in proof thereof, accused no. 1 had produced a bill no. 14309 dated 14-10-1987 issued by accused no. 7 which is at exh. 42 and therefore it is the case of the prosecution that accused no. 7 was a supplier of the goods to accused no. 3. From the evidence it is also revealed that accused no. 7 had purchased that goods from accused no. 9, the manufacturer of the goods and for that, bill no. 914 dated 24-8-1987 is produced at exh. 58. As said earlier, accused no. 8 is a nominee appointed under section 17(2) of the Act, of accused no. 9. In short, accused no. 1 being a partner of accused no. 3 was a vendor for sample of food article in question and accused no. 7 is a supplier of the said goods who supplied that goods to accused no. 3, whereas accused no. 9 is a manufacturer of that very goods who sold it to accused no. 7.

#. It is the case of the prosecution that on or about 14-10-1987 at about 11.00 A.M. the original complainant one Shri A.K.Patel, who was a Food Inspector appointed for the local areas of Gujarat State, paid a visit to shop of accused no. 3 in the company of one Mukeshkumar Jayantilal Thakkar, who acted as a Panch. At that time, accused no.1 Shri Ratilal B. Rathod, being a

partner in said partnership firm was present. It is the case of the prosecution that accused no. 1 was carrying on business of grocery, spices, grains etc. As per the case of the prosecution the complainant, i.e. the Food Inspector took a sample of coriander powder from accused no.1 and paid the price of Rs.21/- to accused no.1. That sample was taken for the purpose of analysis. It is the case of the prosecution that said sample was taken from one sealed packet of coriander powder which was with label of "Coriander Powder (Top Brand) Agmark." That sample was taken as per the procedure prescribed under the Act and the Rules framed thereunder, i.e. The Gujarat Prevention of Food Adulteration Rules, 1955 (for short, `the Rules'). After following due procedure, said sample was packed and sealed in presence of panch witness and a panchnama Exh. 43 was drawn and thereafter that sample was sent to the Public Analyst, Bhuj-Kutch. On that sample being analysed, the Public Analyst issued a report of analysis which is at Exh.63 and as per that report the sample of coriander powder was found to be adulterated as per the definition of "adulterated" under Section 2(i-a) of the Act. Thereafter, after obtaining the legal written consent as per section 20 of the Act, the complainant lodged a private complaint against all the accused nos. 1 to 9 in the court of the Judicial Magistrate First Class, Savarkundla on 26-2-1988.

#. From the record it appears that the learned Magistrate tried the case summarily as per the provisions of section 16A of the Act read with the provisions of Chapter XXI of the Cr.P.C. and therefore he has rendered his judgment below the prescribed form under Section 263 of Cr.P.C. under col. 7 and 8 at Exh. 31.

#. The Food Inspector led his oral evidence as well as documentary evidence in support of his case and after appreciation of the evidence the learned Magistrate has been pleased to acquit the accused on 7-6-1991 by rendering his judgment in prescribed form at Exh.31. As against that judgment, the State Government has preferred this appeal.

#. This court has perused the original record of the case and heard Ms. Kathaben Gajjar, ld. APP for appellant and Mr. D.K. Modi, learned advocate for the respondents at length and in detail. During the course of arguments, learned APP for the appellant has canvassed her arguments that the learned Magistrate has erred in acquitting the accused mainly on the ground that the written consent Exh. 77 is not legal and valid as per section 20 of the Act. She has contended that the said

written consent, as observed by the learned Magistrate, is not legal and valid on two counts; (1) that the Local Health Authority who issued the written consent, exh. 77 has not assigned any reasons for sanctioning the written consent and (2) that the Local Health Authority has not applied his mind before granting the sanction. Learned APP has further argued that the learned Magistrate has not assigned any other reason for acquitting the accused and therefore in this appeal, the only point which is required to be decided is as to whether the written consent exh. 77 is legal and valid as per the provisions of section 20 of the Act.

#. The learned Magistrate has observed that Local Health Authority has not assigned any reason to arrive at the conclusion that there is a prima facie case against all the accused to go for trial and for that written consent is required to be granted in public interest. Ld. APP has argued that in view of decision in Harshvadan D. Sevak, Food Inspector v. Nareshbhai Devandas Vaghvani and Another 1991(2) GLH 615, there will be no need to record the reasons for granting consent in writing under Section 20 of the Act, and further that such a consent given without recording the reasons for the same is not rendered invalid nor the want of reasons will invite any adverse effect, and therefore the finding of the learned Magistrate on the point of written consent is not correct because the Local Health Authority is not required to state the reasons for granting the written consent under section 20 of the Act.

Shri D.K.Modi, ld. advocate for respondents nos. accused nos. 1 to 9 has fairly conceded to this court that he gives up that contention for rendering written consent as not legal and valid on the first ground of absence of reasons which ought to have been assigned by the Local Health Authority. He has further argued that still accused maintain that written consent is not legal and valid on the second ground of non application of mind on the part of the issuing authority and for that he has vehemently argued that written consent Exh. 77 which is issued by Loca Health Authority has not considered the documents produced before him by the Food Inspector for the purpose of grant of written consent.

#. Shri Modi has further argued that along with the documents a report of Public Analyst Exh. 63 was placed before Local Health Authority. As per the arguments of Shri Modi the authority which issued the report Exh. 63 had no authority or powers whatsoever to analyse the sample and to issue the report Exh. 63. As per the

report of the Public Analyst exh. 63, it appears to have been issued on 11-11-1987. As per that report exh. 63, the sample was examined on 2.11.1987. From exh. 63 it also appears that one Shri P.M. Patel was the Public Analyst who issued that report Exh. 63. Shri Modi has argued that on 2.11.1987, Shri P.M. Patel was not a Public Analyst appointed by the State Government. Section 8 of the Act speaks about Public Analysts. As per Section 8 of the Act the Central Government or the State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be public analysts for such local areas as may be assigned to them by the Central Government or the State Government, as the case may be. Thus either the Central Government or the State Government can appoint more than one Public Analysts for

such local areas as may be assigned by respective Governments. Shri Modi has drawn an attention of this Court to Notification No. GY/28/DLB/1082/2619-(83) JH dated 06-9-1985 issued by the Government of Gujarat in Health and Family Welfare Department which is published at page 794 of Part IVA of the Gazette dated 7-11-1985. As per this Notification one Shri I.M. Desai, Junior Scientific Officer in Food and Drugs Laboratory, Vadodara was appointed as Public Analyst for all the local areas of the State of Gujarat. That Notification remained effective and operative, till 12-5-1988. Shri Modi has drawn an attention of this Court to another Notification No. GY/22/DLB-1082-2362(88) JH dated 12-5-1988 of the Government of Gujarat in Health and Family Welfare Department which is published in Part IVA of Gazette dated 13-5-1988. By that Notification dated 12-5-1988, earlier Notification dated 6-9-1985 was rescinded, meaning thereby, the earlier appointment of Shri I.M. Desai came to an end on 12-5-1988. When Shri I.M. Desai was the Public Analyst for all the local areas of the State of Gujarat, then Shri P.M.Patel cannot be said to be a Public Analyst appointed under Section 8 of the Act. Shri Modi has further drawn an attention of this Court to third Notification No. GY-23-DLB-1082-2362(88)-JH 12-5-1988 and by that Notification Shri P.M. Patel, Sr. Scientific Asst., Food and Drugs Laboratory, Bhuj was appointed for the first time to be Public Analyst for all the local areas in the State of Gujarat along with other

six persons including Shri I.M. Desai and therefore for the first time on 12-5-1988 Shri P.M. Patel was appointed as a Public Analyst as per Section 8 of the Act for all the local areas in the State of Gujarat. If this

is so, it is crystal clear that on 2-11-1987, the date on which Shri P.M.Patel analysed the sample was not a Public Analyst. Even on the date 11-11-1987 on which the report exh. 63 was issued, he was not a Public Analyst. He became Public Analyst for the first time on 12-5-1988. To this factual aspect, learned APP has not made it clear as to whether on 11-11-1987 Shri P.M. Patel had the powers to act as a Public Analyst or not and therefore from the record it appears that the person who analysed the sample of coriander powder in question had no authority to analyse the said sample and to issue a report in respect of the analysis of that sample. The learned advocate Shri Modi has further argued that Local Health Authority who granted the written consent Exh. 77 relied on such type of report of public analyst Exh. 63 for arriving at a decision to grant the written consent against all the accused. The Local Health Authority ought to have considered the fact that Shri P.M. Patel was not at all a public analyst as per section 8 of the Act as on date of the analysis of the sample in question as well as on the date of issuance of the report Exh. 63.

##. In this view of the matter, it can safely be concluded that the Local Health Authority did not apply his mind before granting the written consent and once it is found that the written consent Exh. 77 is issued by Local Health Authority without applying his mind to the

documents produced before him, then the finding of the learned Magistrate cannot be said to be erroneous or wrong. After all, in appeal before the appellate court, the appellant has to satisfy that the finding of the learned Magistrate is wrong and erroneous, based on misreading of evidence or non application of correct law to the case. Here in the instant case, the learned APP for the appellant is not able to show that Shri P.M. Patel had the authority to act as a Public Analyst under Section 8 of the Act as on the date of issuance of the report Exh. 63, and therefore from the record it appears that the Local Health Authority granted the written consent exh. 77 without applying his mind, more particularly to the report of the Public Analyst Exh. 63 issued by Shri P.M. Patel, who was not at all the Public Analyst on the date of analysis and issuance of report Exh. 63.

In view of the discussion made hereinabove, this Court finds the written consent to be not legal and valid as the same was issued by concerned authority without application of mind. Under the circumstances, this court

finds no substance in the arguments of ld. APP that the learned Magistrate has erred in arriving at the decision of acquittal on the ground that the sanction is not legal and valid and therefore the arguments advanced by learned APP are rejected.

##. In the instant case accused no. 9 being a manufacturer of coriander powder sold that goods to accused no. 7 vide bill exh. 58 and accused no. 7 being a supplier sold that very goods to accused no.3

under bill exh. 42 and therefore looking to fact that accused nos. 1 to 6 have pleaded defence under section 19(2) of the Act. Hence, learned APP for the appellant has fairly conceded that the prosecution does not challenge the acquittal of accused nos. 1 to 6 because admittedly they purchased the goods of coriander powder manufactured by accused no. 9 of which accused no. 8 is a nominee and therefore the arguments are advanced only for accused nos 8 and 9. Here in this case accused no. 8 being a nominee of accused no. 9 had submitted application exh. 10 with a request to send the sample of coriander powder to Central Food Laboratory and ultimately the Central Food Laboratory issued report Exh. 12 and therefore it can be said that from the very beginning accused nos. 8 and 9 had challenged the public analyst report and that it is found that Local Health Authority, while granting the written consent exh. 77 considered the report of public analyst exh. 63 which is issued by Shri P.M Patel who had no authority to act as public analyst and therefore obviously the accused no. 8 and 9 have challenged the written consent on the ground of non application of mind.

##. Except the above contentions no other contentions are taken by the learned APP for the State.

##. In view of the fact that cognizance by the learned Magistrate was taken on the basis of written consent exh. 77 which was issued by a Local Health Authority without application of mind and therefore the finding of the learned Magistrate, in no case, can be said to be erroneous or wrong and therefore this court finds that there is nothing otherwise to come to a different conclusion and disturb the finding of the learned Magistrate.

Under the circumstances, this appeal fails and is hereby dismissed confirming the order of acquittal passed by the learned Magistrate. Pronounced in open Court.

(H.H. Mehta, J)